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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/551,745	04/18/2000	Daniel Manuel Dias	AM9-98-080C	2613

7590 04/25/2002

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EXAMINER
NAMAZI, MEHDI

ART UNIT	PAPER NUMBER
2187	

DATE MAILED: 04/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/551,745	Dias et al.
Examiner	**Art Unit**
Mehdi Namazi	2187

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *three* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Apr 18, 2000*

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1, 3-14, 16-18, and 20-22* is/are pending in the applica

4a) Of the above, claim(s) _____ is/are withdrawn from considera

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1, 3-14, 16-18, and 20-22* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirem

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). *3*

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

19) ☐ Notice of Informal Patent Application (PTO-152)

20) ☐ Other:

DETAILED ACTION

1. Claims 1, 3-14, 16-18, 20-22 are presented for examination.

In the Specification:

2. The disclosure has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the disclosure.

This application filed under 37 CFR 1.60 lacks the necessary reference to the prior application. A statement reading "This application is a continuation of application No.09/113,752 , filed July 10, 1998, Now U.S. Patent No. 6,182,197B1." should be enter following the title of the invention or as the first sentence of the specification. Also, the current status of all non-provisional parent applications referenced should be included.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982);

In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-14, 16-18, 20-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,182,197B1.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the commonly assigned patents also claim a logic means for associating one or more data access request, means for sending data access requests and priorities to storage nodes. The system as claimed in the commonly assigned patents also includes means for ordering data access requests at the storage nodes based on respective priorities. The deletion of limitations such as those means for changing the priorities of at least one data access request ; and reordering data access requests at the storage nodes would have been obvious to those of ordinary skill in the art at the time the claimed invention was made and, as such, does not patentably define the claimed invention over the prior art of record, see *In*

re Larson, 340 F.2d 965, 144 USPQ 347(CCPA 1965). **See MPEP 2144.04(II).**

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

5. Claims 1,3-4,6-11,13-14,16-18,20-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Byrn et al. (USPN:5,761,716).

As per claims 1,8-9,11,17 and 22, Byrn teaches a computer system including plural client nodes communicating data access requests to one or more storage nodes, comprising:

logic means for associating one or more of the data access requests with respective priorities(col.2, lines 8-15);

logic means for sending the data access requests and priorities to the storage nodes(col. 2, lines 8-22); and

logic means for ordering the data access requests at the storage nodes based on the respective priorities, such that the

data access requests are satisfied in consideration of their respective priorities(col. 2, lines 8-22).

As per claims 3, 13 and 20, Byrn teaches logic means for terminating at least one data access request(cols. 6-7, lines 64-5).

As per claims 4, 14, and 21 Byrn, means for loosely synchronizing the computing and storage nodes with each other(col. 2, lines 10-12).

As per claims 6 and 16, Byrn teaches wherein the system is a virtual shared disk system(col. 2, lines 44-47).

As per claims 7, 10 and 18, Byrn teaches wherein the priorities include time-based deadlines(col. 8, lines 21-24).

Allowable Subject Matter

6. Claims 5, and 12 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and double patenting rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,813,016 (Sumimoto)teaches Device/system for processing shared data accessed by a plurality of data processing devices/systems.

US Patent No. 4,930,121(Shiobara)teaches Network system using Token-passing bus with multiple priority levels.

US Patent No. 5,603,058(Belknap et al.)teaches video optimized streamer.....

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mehdi Namazi whose telephone number is (703) 306-2758. The examiner can normally be reached on Monday-Thursday from 7:00 to 5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Do Hyun Yoo, can be reached on (703) 308-4908. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 308-9051 (for formal communications intended for entry)

Or:

(703) 305-6606 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park 2, 2121 Crystal Drive,

Arlington, VA., Sixth Floor (Receptionist).

M. Namazi
April 16, 2002

DO HYUN YOO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100